

ESTATE OF FRANK DOYETO

IBIA 85-9

Decided August 23, 1985

Appeal from a denial of rehearing issued by Administrative Law Judge Sam E. Taylor in Indian Probate IP OK 78 P 84.

Reversed and remanded.

1. Indian Probate: Claim Against Estate: Proof of Claim

When an otherwise valid claim against an Indian trust estate is challenged on the sole grounds that payments may have been made on the claim, the claim should be approved, and the Administrative Law Judge (Indian Probate) should retain jurisdiction over the matter and require additional proof as to whether any payments have been made.

APPEARANCES: Eric E. Anderson Esq., Carnegie, Oklahoma, for appellant; Frances Oheltoint, Kiowa Tribal Court Advocate, Carnegie, Oklahoma, for appellees. Counsel to the Board: Kathryn A. Lynn.

OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

On December 18, 1984, the Board of Indian Appeals (Board) received a notice of appeal from Carnegie Tri-County Municipal Hospital (appellant). Appellant sought review of a November 1, 1984, order denying rehearing issued by Administrative Law Judge Sam E. Taylor in the estate of Frank Doyeto (decendent). The denial of rehearing let stand an October 16, 1984, order which, in part, denied appellant's claim for services rendered to decendent. Appellees in this matter are decendent's heirs, Bonnie J. Redbird, Betty York, Victor Doyeto, Daniel Doyeto, Chad Doyeto, Marion Doyeto, and Juanita D. Yeahquo. For the reasons discussed below, the Board reverses the denial of rehearing and remands the case to Judge Taylor for a determination of the amount owed to appellant under its claim.

Background

Decendent, Kiowa Allottee 1860, was born on June 11, 1895, and died testate at Carnegie, Oklahoma, on October 3, 1983. A hearing to probate decendent's Indian trust estate was held by Judge Taylor on March 14, 1984. Pursuant to Departmental regulations found in 43 CFR 4.250, appellant filed a claim against decendent's estate in the total amount of \$13,203.16 for hospital services and medical supplies provided to decendent in connection with three hospitalizations.

At the hearing Judge Taylor inquired whether any of decedent's heirs objected to appellant's claim. Appellee Bonnie Redbird stated: "Well, I would like to have an accounting of it and see because like they say that should have been taken care of" (Tr. 4). In context, it is clear that the objection questioned whether the Bureau of Indian Affairs (BIA) had made any payments on the account. There was no objection to the basic validity of the claim. Because no one was present from the hospital to support the claim, Judge Taylor, ruling from the bench, disallowed the claim in total. Similar claims filed by a physician and Medi-B of Oklahoma were also disallowed when no one was present to support them.

By oral notice given at the hearing, the hearing was continued until June 13, 1984, in order to attempt to effect a settlement of the estate with one of decedent's heirs who was not present at the proceeding. Parties not present at the hearing were apparently not given notification of the continuance. 1/

The final order in this estate was issued on October 16, 1984. That order formally denied appellant's claim at page 2:

Claims were filed against decedent's estate by Medi-B of Oklahoma in the amount of \$26.55; Tri-County Municipal Hospital in the amount of \$13,203.16; and Keith McFarland, M.D., in the amount of \$623. The heirs of the decedent objected to each of said claims. No one was present for any of said claimants to prove the claim. Accordingly, each of said claims is not approved.

Appellant sought rehearing on the denial of its claim. Rehearing was denied by order dated November 1, 1984. Appellant then brought the present appeal to the Board.

Discussion and Conclusions

On appeal appellant raises the same claims as were presented in its petition for rehearing. In essence appellant alleges that it had established prima facie proof of its claim when it submitted a claim in accordance with the requirements of 43 CFR 4.250, 2/ that claims similarly submitted in other

1/ Under 43 CFR 4.212(b), "[a] continuance may be announced * * * at the original hearing by the administrative law judge."

2/ Section 4.250(b), the paragraph relevant to this case, states:

"The claims of non-Indians shall be filed in triplicate, itemized in detail as to dates and amounts of charges for purchases or services and dates and amounts of payments on account. Such claims shall show the names and addresses of all parties in addition to the decedent from whom payment might be sought. Each claim shall be supplemented by an affidavit, in triplicate, of the claimant or someone in his behalf that the amount claimed is justly due from the decedent, that no payments have been made on the account which are not credited thereon as shown by the itemized statement, and that there are no offsets to the knowledge of the claimant."

Indian estates had been routinely approved, and that it was arbitrary and capricious to disallow the claim merely because of an unsupported objection raised by the heirs. Furthermore, appellant contends that it should have been given notice of the proposed denial of its claim and an opportunity to provide whatever additional evidence in support of it that the Administrative Law Judge deemed necessary.

Appellees argue that the notice of hearing sent out by the Administrative Law Judge stated: "All persons having an interest in the estate of the above-named decedent, and all creditors having claims against said estate are hereby notified to be present at the hearing and furnish such evidence as they desire." Appellees therefore assert that when an objection was raised to the claim, the Judge properly disallowed it in total when no one was present to support it. Appellees state that appellant had not established a prima facie case and that "the regulation dictates that the creditors be present and furnish evidence to establish the claim." ^{3/} Appellee's brief at 5.

The Board has reviewed the circumstances of the objection to appellant's claim. It is clear that there was no objection to the validity of the claim, but rather only to the amount. The objection was based upon the belief of the heirs that BIA may have made payments on the claim. Whether or not payments had been made is a question easily susceptible to proof through BIA records.

[1] The Board finds that it was improper to disallow appellant's entire claim, based merely upon a question raised by the heirs as to whether BIA had made any payments on the claim. When no objection was raised to the basic validity of the claim, and there were no apparent grounds for disapproving it, the claim should have been approved. Cf., Estate of Wesley Emmet Anton, 12 IBIA 139 (1984). The Judge was then required to determine the amount payable on the claim. As the Board stated in Estate of John Joseph Kipp, 8 IBIA 30, 37-8 (1980):

The Department's regulatory scheme for the payment of claims * * * clearly envisions that the Administrative Law Judge presented a claim will decide the amount of payment, if any, to which a claimant is entitled. * * * This decision often bears on mixed questions of fact and law, * * * and, where even on fact alone, it remains a matter which is best decided in a quasi-judicial setting.

In Kipp the Board noted that the determination of the amount payable on a claim might require the Judge to retain jurisdiction over the case pending the receipt of further information. ^{4/} In the present case, the Judge should have approved the claim, but retained jurisdiction to require appellant and BIA to show whether any payments had been made against it. ^{5/}

^{3/} Appellees do not cite any regulation imposing this requirement, and we find none.

^{4/} The specific issue in Kipp was whether a claim should be satisfied primarily from non-trust assets of the estate.

^{5/} The Board is aware of the general practice among Indian probate Administrative Law Judges to require the presence of claimants at the probate

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the order appealed from is reversed and this case is remanded to Judge Taylor for a determination of the amount owed to appellant on the claim submitted in this estate.

Bernard V. Parrette
Chief Administrative Judge

We concur:

Jerry Muskrat
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

fn. 5 (continued)

hearing to support their claims when an objection is raised. That practice was apparently initially based upon a regulation found in 25 CFR 15.23(f), which provided: "Any person who has filed a claim must, if so directed by the examiner of inheritance [now Administrative Law Judge (Indian Probate)], present himself for examination thereon at the hearing or at a supplemental hearing." This regulation was interpreted in Estate of William Fills the Pipe, IA-1436 (1966), as requiring that when a party in interest objected to a creditor's claim, the creditor must be present at the hearing to prove the claim.

When the probating of Indian trust estates was transferred from the Office of the Solicitor to the Office of Hearings and Appeals in 1970, new regulations were prepared for inclusion in 43 CFR Part 4, Subpart D, and the regulations in 25 CFR Part 15 were deleted except for a cross-reference. The regulation formerly found in section 15.23(f) was not included in the new regulations. Despite this omission, creditors are still routinely required to be present at the hearing if an objection is raised to their claims. This practice has previously been accepted by the Board without discussion of the effect of the deletion of section 15.23(f). See Estate of Elmer A. Olney, 8 IBIA 166 (1980); Estate of Lawrence Ecoffey, 5 IBIA 85 (1976).